

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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June 13, 2018

Javier Laureano, M.P.A., Ph.D.
Director
Clean Water Division
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Dear Mr. Laureano,

I am in receipt of your letter dated March 7, 2018, on behalf of Region 2 of the USEPA (Region 2), regarding NYSDEC's amendments to Part 701 and 703 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York adopted on November 4, 2015 (2015 Regulations). By this letter, NYSDEC respectfully requests that USEPA reconsider the part of that March 7, 2018 letter that disapproved the amendments to 6 NYCRR 703.4(a) and (b) in the 2015 Regulations.

In your March 7, 2018 letter, Region 2 stated, for the first time, its disapproval of NYSDEC's revised criteria at 6 NYCRR 703.4(a) and (b), more than two years after the criteria were submitted to EPA, EPA first issued comments, and the rule was finalized. That portion of the 2015 Regulations extended the applicability of existing total and fecal coliform criteria to Class SD and Class I saline surface waters.

Additionally, in your March 7, 2018 letter, you reiterate the May 9, 2016 approval by Region 2 of NYSDEC's amendments to 6 NYCRR Part 701. As NYSDEC stated in its February 24, 2016 letter to Region 2, and is clear from the express terms of the 2015 Regulations, those amendments require that Class SD and Class I saline surface waters be "suitable" for primary contact recreation, such as swimming.

In promulgating the amendments to 6 NYCRR Part 701 in the 2015 Regulations, NYSDEC did not revise the "best usages" of Class SD and Class I waters. The best usages of those waters were, and remain, "fishing," and "secondary contact recreation and fishing," respectively.¹

¹ By way of explanation, NYSDEC's use of the term "best usage" is equivalent to EPA's use of the term "designated use." NYSDEC does not equate its "suitability" designations, which are separate from its "best usage" designations, to be "designated uses."



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Instead, by adding the suitability, it was NYSDEC's intent to improve the water quality of the Class SD and Class I saline surface waters towards achieving Congress' goal in the Clean Water Act of rendering all the nation's waters fit for swimming. NYSDEC purposely used the term "suitable" instead of "best usage" because it was not NYSDEC's intent to impose, at that time, the more stringent criteria (e.g., enterococcus) required for waters whose best usage is primary contact recreation. NYSDEC will continue to evaluate and assess the appropriate criteria to be applied to the Class SD and Class I waters.

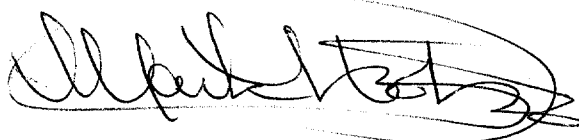
EPA's March 7, 2018 disapproval is inconsistent with EPA's May 9, 2016 approval. New York's water quality standards do protect the "best usages" of Class SD and Class I waters.

In light of this explanation of NYSDEC's regulatory language and intent, and because New York's water quality standards do protect the "best usages" of Class SD and Class I waters, NYSDEC respectfully asks EPA to reconsider its March 7, 2018 letter and to remove the disapproval of the amendments to 6 NYCRR 703.4(a) and (b) in the 2015 Regulations.

By sending this letter, NYSDEC is not waiving any rights or claims it may have with regards to EPA's March 7, 2018 letter.

If you should have any questions or need further information, please feel free to call me at 518-402-8233.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Klotz', with a large, sweeping flourish at the end.

Mark Klotz, Director